

DAC

REV. 11/98
For Other Than A Small Entity

Docket No. LT-5 Reissue



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION FOR REISSUE OF U.S. PATENT 4,823,070

Date of Issue : April 18, 1989
Inventor : Carl T. Nelson
Title : SWITCHING VOLTAGE REGULATOR CIRCUIT
Assignee : Linear Technology Corporation
Serial No. : 08/794,374
Filing Date : December 10, 1996
Examiner : Edward Glick
Group Art Unit : 2878

Hon. Assistant Commissioner
for Patents
Box Reissue
Washington, D.C. 20231

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DACPATENTS

October 6, 1999

TRANSMITTAL LETTER

Sir:

Transmitted herewith: [X] a Further Update on Status of Concurrent Litigation; Request for Continued Suspension of Action in Reissue Application in View of Concurrent Litigation; to be filed in the above-identified patent application.

FEE FOR ADDITIONAL CLAIMS

[X] A fee for additional claims is not required.

[] A fee for additional claims is required.

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The additional fee has been calculated as shown below:

CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE	ADDITIONAL FEES
TOTAL CLAIMS	-	* =	X \$ 18 =	\$
INDEPENDENT CLAIMS	-	** =	X \$ 78 =	\$
FIRST PRESENTATION OF A MULTIPLE DEPENDENT CLAIM			+ \$260 =	\$

* If less than 20, insert 20.

TOTAL \$ _____

** If less than 3, insert 3.

A check in the amount of \$ _____ in payment of the filing fee is transmitted herewith.

The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 C.F.R. § 1.16, in connection with the paper(s) transmitted herewith, or credit any overpayment of same, to deposit Account No. 06-1075. A duplicate copy of this transmittal letter is transmitted herewith.

Please charge \$ _____ to Deposit Account No. 06-1075 in payment of the filing fee. A duplicate copy of this transmittal letter is transmitted herewith.

EXTENSION FEE

The following extension is applicable to the Response filed herewith; \$110.00 extension fee for response within first month pursuant to 37 C.F.R. § 1.136(a); \$380.00 extension fee for response within second month pursuant to 37 C.F.R. § 1.136(a); \$870.00 extension fee for response within third month pursuant to 37 C.F.R. § 1.136(a); \$1,360.00 extension fee for response within fourth month pursuant to 37 C.F.R.

§ 1.136(a); \$1,850.00 within fifth month pursuant to
37 C.F.R. § 1.36(a).

- [] A check in the amount of [] \$110.00; [] \$380.00;
[] \$870.00; [] \$1,360.00; [] \$1,850.00 in payment
of the extension fee is transmitted herewith.
- [X] The Commissioner is hereby authorized to charge
payment of any additional fees required under
37 C.F.R. § 1.17 in connection with the paper(s)
transmitted herewith, or to credit any overpayment
of same, to Deposit Account No. 06-1075. A
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transmitted herewith.
- [] Please charge the [] \$110.00; [] \$380.00;
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FURTHER UPDATE ON STATUS OF CONCURRENT LITIGATION;
REQUEST FOR CONTINUED SUSPENSION OF ACTION IN
REISSUE APPLICATION IN VIEW OF CONCURRENT LITIGATION

Sir:

Action in the above-captioned reissue application has been suspended in view of concurrent litigation involving "on-sale" bar issues that overlap with issues in this reissue proceeding. See Decision On Request For Suspension Of Action, dated April 1, 1997. Reissue applicant Linear Technology Corporation ("LTC") submits this paper to advise the Office of the status of the concurrent litigation, and to request that

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the suspension of action in the reissue application be continued until the outcome of an appeal in the concurrent litigation is decided.

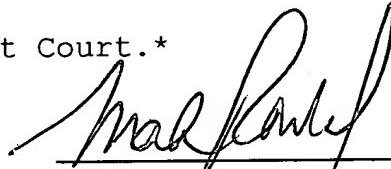
The concurrent litigation involves United States patent 4,755,741 assigned to LTC, which shares a common filing date with LTC's U.S. patent 4,823,070 now in reissue. In May 1994, LTC commenced a lawsuit against Micrel, Inc., in the United States District Court for the Northern District of California, Case No. C94-1633 EFL (now designated C94-1633 MHP), alleging among other things that Micrel was infringing the '741 patent. In the litigation (Linear Technology Corp. v. Micrel Inc., C94-1633 MHP), the defendant Micrel raised the defense that claims of LTC's '741 patent are invalid in view of the on-sale bar of 35 U.S.C. § 102(b).

On April 7-10, 1998, the District Court conducted a trial on the on-sale bar defense raised by Micrel.

On August 20, 1999 the District Court entered a judgment declaring that the '741 patent is invalid under 35 U.S.C. § 102(b), and dismissing LTC's action against Micrel. The judgment does not terminate the litigation, because LTC has appealed the judgment as a matter of right to the Court of Appeals for the Federal Circuit. On September 17, 1999, in order to perfect its right of appeal pursuant to Federal Rule of Appellate Procedure 4, LTC timely filed a notice of appeal. On October 1, 1999, Micrel also filed a notice of appeal. The issue on appeal will overlap with the present reissue

application because the same LTC LT-1070 product that the District Court concluded was on-sale more than one year prior to November 18, 1986 – the common filing dates of the '070 and '741 patents – embodies at least some of the subject matter disclosed and claimed in the '070 patent.

In view of the continuation of the concurrent litigation at the appellate court level, and in order to avoid duplication of effort between the litigation and this reissue proceeding, applicant respectfully requests that the current suspension of action in this reissue application be continued until termination of the litigation, including LTC's appeal of the judgment of the District Court.*



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10-6-99

U.S.P.T.O.

J. Xie
Signature of Person Signing

* Applicant submits this paper pursuant to a telephone discussion between the undersigned and Examiner Edward Glick. Applicant previously submitted a status paper dated May 6, 1999, entitled Updated Status Of Concurrent Litigation, pursuant to a prior telephone discussion with Special Programs Examiner Hien H. Phan (see the attached).